

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CHERI L. POTTER**

Claimant

VS.

**HUTCHINSON HOSPITAL CORPORATION**

Respondent

Self-Insured

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Docket No. 198,669

**ORDER**

Claimant requested review of the Award entered by Administrative Law Judge Bruce E. Moore dated April 30, 1996. The Appeals Board heard oral argument on October 9, 1996, in Wichita, Kansas.

**APPEARANCES**

Claimant appeared by her attorney, David H. Farris of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Scott J. Mann of Hutchinson, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board reviewed the record and adopts the stipulations listed in the Award of the Administrative Law Judge.

### **ISSUES**

The Administrative Law Judge denied this claim finding it noncompensable as claimant had failed to sustain her burden of proof that the injuries for which she seeks compensation arose out of and in the course of her employment with respondent. Accordingly, the remaining issues as to the nature and extent of claimant's disability and the claimant's entitlement to future and unauthorized medical benefits were not decided. Therefore, the sole issue for Appeals Board review is whether claimant's injury arose out of and in the course of her employment with the respondent.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed. Claimant injured her back over the weekend of February 8 through 10, 1992 while engaged in her regular job duties as a nurse. However, the evidence indicates that claimant sustained further aggravation to her back while warming up and preparing to play volleyball on February 11, 1992. That incident constituted a subsequent and intervening injury such that claimant's entitlement to workers compensation benefits for her prior work-related injury cannot be established. Therefore, the Appeals Board finds that claimant has failed to meet her burden of proof concerning to what extent, if any, her present condition is a result of the work-related accidents.

Claimant denies that she actually played in the volleyball game on February 11, 1992. Claimant's position, in this regard, is supported by the testimony of two other players on the volleyball team. However, claimant admits that during her warmups in preparation for playing volleyball something happened. She, thereupon, decided that she could not participate further and has not played volleyball since. Although claimant downplays the significance of the volleyball incident to her low back condition, the medical records suggest otherwise. The first three healthcare providers from whom claimant sought treatment each obtained a history from claimant which calls into question the work-related nature of her injury. The records of two of those providers specifically mentioned volleyball as the precipitating incident for her decision to seek treatment. In addition, two of the three were not given a history of her condition being work related at all. As for the third, even though lifting at work was included as a factor, the treatment was not submitted under workers compensation but instead to the claimant's personal health insurance coverage provider.

Claimant was first seen by Dr. Terry L. Webb, a chiropractor, with whom claimant had treated previously for back problems. His office note of February 12, 1992 indicates that her low back pain had become more severe on February 11, after a volleyball game. The records indicated that claimant also mentioned lifting heavy patients at the

February 12th office visit, and at her previous office visit on February 7, 1992, as well. Although Dr. Webb gave an opinion relating claimant's back problems to her lifting patients at work rather than to her playing volleyball, he admits that his clinical notes do not designate the matter was handled under workers compensation and that, in his practice, whether payments are to be submitted to health insurance or workers compensation is important to him and would generally be noted in his records. With respect to his treatment with claimant, it appears that it was all submitted for payment to Blue Cross, claimant's general health insurance carrier.

Claimant was next treated by Craig Longhoffer, a registered physical therapist, at the Hutchinson Clinic. He first saw claimant on February 14, 1992 as a referral from Dr. Christopher P. Rogers. Mr. Longhoffer testified that he had a specific recollection of claimant telling him on that date that she felt her injury was due to a volleyball-playing act. His progress notes of February 14, 1992 contained the following history: "Patient reports symptoms began 2-11-92 after playing volleyball." He treated her for a period of weeks but did not see any significant improvement in her symptoms.

Claimant was next seen by Dr. Rogers for whom claimant was working at the time of Dr. Rogers' deposition. Dr. Rogers had been claimant's personal physician and had treated her for prior back problems. He first examined her following the subject accident on February 25, 1992. Claimant's treatment included ordering an MRI test to rule out a surgically treatable disc. He continued to treat her until March 2, 1992 when he was advised that the condition was work related and should be handled as a workers compensation matter. Dr. Rogers testified that he was not aware that he was treating claimant for a workers compensation matter until claimant's care was taken over by Dr. Michael S. Patterson, the workers compensation physician for the respondent hospital.

The Appeals Board is mindful of the testimony of Dr. Lawrence R. Blaty who relates claimant's condition to a work injury. However, Dr. Blaty did not examine claimant until November 11, 1992 which was after claimant had reported her injury to be work related. The history he received from claimant contained no mention of the volleyball incident.

Because the evidence fails to prove that claimant's injury is the result of her activities at work and not the February 11, 1992 volleyball incident, the Appeals Board affirms the findings and conclusions of the Administrative Law Judge and finds that claimant has failed to sustain her burden of proof that the injuries for which she seeks compensation arose out of and in the course of her employment with respondent.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the April 30, 1996 Award entered by Administrative Law Judge Bruce E. Moore should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David H. Farris, Wichita, KS  
Scott J. Mann, Hutchinson, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director